SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1965~~ 1966

No. ~~72~~ 73

ROBERT REDRUP, PETITIONER,

vs.

NEW YORK.

ON WRIT OF CERTIORARI TO THE APPELLATE TERM OF THE SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JUNE 21, 1966.

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[fol. 1]

IN THE APPELLATE TERM OF THE SUPREME COURT OF NEW YORK

FIRST JUDICIAL DEPARTMENT

Docket No. A 4765 1964

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

—against—

ROBERT REDBUP, Appellant.

STATEMENT UNDER RULE 5531

1. The index number was No. A 4765—1964.

2. The names of the parties are as given above. There has been no change. The People of the State of New York are represented by Hon. Frank S. Hogan, District Attorney of New York County; defendant is represented by Osmond K. Fraenkel.

3. The action was commenced in the Criminal Court of the City of New York, County of New York.

4. The action was commenced with the filing of a complaint on April 11, 1964. Defendant pleaded not guilty on April 11, 1964. An information was filed on April 29, 1964. Defendant pleaded not guilty on May 14, 1964.

[fol. 2] 5. The prosecution under Penal Law, Section 1141, subdivision (1), on a charge in connection with the sale of two books entitled "Lust Pool" and "Shame Agent" alleged to be obscene. The information contained two counts, one of which related to each of the books.

6. The appeal is from a judgment finding defendant guilty of both counts entered on June 11, 1964. Defendant received a suspended sentence on July 28, 1964.

7. The appendix method is not being used.

[fol. 3]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1 A, COUNTY OF NEW YORK

COMPLAINT—Filed April 11, 1964

State of New York,
County of New York, ss.:

Ptl Robert Griefenstein of No. P B MS, County of New York City of New York, being duly sworn deposes and says that on April 10 1964 at about 5 50 P. M., at 263 W 42 St newsstand
street level of subway arcade in the County of Ny State of New York, the defendant, Robert Redrup did commit the crime of:

1 Obscene Prints and Articles, in that said defendant unlawfully did sell, lend, give away, distribute, show and transmute, and offer to sell, lend, give away, distribute, show and transmute, and possess with intent to sell, lend, distribute, give away, show and transmute, a certain obscene, lewd, lascivious, filthy, indecent, sadistic, masochistic and disgusting book, pamphlet, story paper, writing, paper, picture, drawing and photograph, and written, printed and recorded matter of an indecent character, having knowledge thereof, whereof a more particular description would be offensive to this court, and improper to be spread upon the records thereof, wherefor such description is not here given;

under the following circumstances: the deponent says that he did approach the above mentioned newsstand and spoke to the attendant at the stand and he did then purchase two paper back books. They were titled "Lust Pool" and this is a Pillar book and "Shame Agent" an Ember Book. The deponent paid the sum of $1.65 for the two said books and the defendant did accept the money. The deponent says that the books he purchased were of a lewd lascivious

indecent nature and he did then announce his authority to the defendant and seized six additional books titled "Lust pool". No other property was seized.

Ptl Robert Griefenstein

W. E. Ringel, Judge, Criminal Court of the City of New York.

Sworn to before me, April 11 1964

Vacation Aug 10 to Aug 22 1964

Adjourned to 4/28 Bail $

PART 1A

FRANK COURT, STR. COURT REPORTER

County of

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

APR 11 1964 WILLIAM E. RINGEL Judge.
Date

Adjourned to May 14 Bail $ DC

Part 2B.

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

APR 8 1964 NICHOLAS F. DEL GIUDICE
Date

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Upon arraignment and before accepting a plea, defendant was advised pursuant to Section 335b Code of Criminal Procedure as follows:

On this charge the law authorizes a different or additional punishment if you have previously been convicted of this or a similar offense. The fact that you have been previously convicted may be established after conviction or plea of guilty and if established you will be subject to a different or additional punishment.

Date Judge.

SENTENCE

Judge.

4

Week-end/Night Part Docket

Court Docket A 4765

13

CRIMINAL COURT OF THE CITY OF NEW YORK

Part 1 A County of NY

THE PEOPLE OF THE STATE OF NEW YORK

vs.

1. Robert Redrup m 36
11-41 F D R Drive
Address

2.

2525 Address

3. Address

ARNOLD WARSHAWSKY COURT REPORTER

Defendant arraigned 4 11 64 19

Hon. Judge.

Griefenstein 3732
Officer and Shield No.

PBS
Assignment.

The defendant, on being brought before me was informed of the within charge of violation of

Penal Law § 1141—Obscene Prints and Articles

of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings, of his right to an examination of the charge, of his right to an adjournment to procure counsel or to communicate with anyone and of his right to a trial in a part of the Court held by a panel of three judges.

FRANK COURT, STR. COURT REPORTER

APR 11 1964 WILLIAM E. RINGEL Judge.

Defendant pleads GUILTY

Date , 19

Judge.

Tried and found GUILTY

Date , 19

Judge.

Witnesses—name and address

Complaint prepared by Sgt Hagan

Exam. Waived ....., 19....

Exam. Begun ....., 19....

Exam. Closed ....., 19....

ORDER

There being no sufficient cause to believe the within-named

.....

.....

.....

guilty of the offense within mentioned, I order said defendant to be discharged.

Dated, ..., 19....

.....
Judge.

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

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guilty thereof, I order that said defendant be held to answer and be admitted to bail in the sum of

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and be committed to the Commissioner of Correction of the City of New York until he give such bail.

Dated, ..., 19....

.....
Judge.

CASH BAIL POSTED. Treas. Cert. #.....

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

.....
Date *Judge.*

.....
Refund Number *Court Clerk.*

[fol. 5]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

against

ROBERT REDRUP, Defendant.

INFORMATION—Filed April 29, 1964

Be it Remembered that I, Frank S. Hogan, the District Attorney of the County of New York, by this information, accuse the above-mentioned defendant of the Crime of Obscene Prints and Articles, committed as follows:

The said defendant, on April 10, 1964, in the County of New York, unlawfully did sell to one Robert Griefenstein, a certain obscene, lewd, lascivious, filthy, indecent, sadistic, masochistic and disgusting book entitled "Lust Pool," whereof a more particular description would be offensive to this court and improper to be spread upon the records thereof, wherefore such description is not here given.

Second Count

And I, the District Attorney Aforesaid, by this information, further accuse the said defendant of the Crime of Obscene Prints and Articles, committed as follows:

The said defendant, on April 10, 1964, in the County of New York, unlawfully did sell to one Robert Griefenstein, a certain obscene, lewd, lascivious, filthy, indecent, sadistic, masochistic and disgusting book entitled "Shame Agent," whereof a more particular description would be offensive to this court and improper to be spread upon the records thereof, wherefore such description is not here given.

Frank S. Hogan, District Attorney.

Witnesses

ROBERT GRIEFENSTEIN
PBMS

Cal. No. 2527 A 4765

CRIMINAL COURT OF THE
CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE

vs.

POLICE DEPT. RECORD ATTACHED

- ROBERT REDRUP B.

INFORMATION:
OBSCENE PRINTS.

FRANK S. HOGAN,
District Attorney.

Filed APR 23 1964

Counsel,

ADJOURNMENTS:

5/14 2 B

U. A. REL'D PAPERS

FOR

[fol. 6]

MAY 14 1964

T. VINCENT QUINN WALTER J. BAYER
MICHAEL CAGLIANO

JUN 1964

JOHN M. MURTAGH

VINCENT R. IMPELLITTERI THOMAS E. ROHAN
MICHAEL A. CASTALDI

Tried & dec. reserved for June 11, 64
V & P Impellitteri
June 4, 64 P.J.

JACOB KLEIN, COURT REPORTER

(1)

JUN 11 1964

JOHN M. MURTAGH

VINCENT R. IMPELLITTERI THOMAS E

MICHAEL A. C

Def. found guilty on Charges of Counts 1 of Investigation

Sentence July 28, 19

V & P Impellitteri

6-11-64

ON TRIAL, DEFENDANT CONVICT

6-11-64 F

INVESTIGATION AND SENTENCE

July 28

VINCENT R. IMPELLITTERI

JOHN GREEN, Court Reporter

DAVID D. GEDDES, COURT REPORTER

(11)

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[fol. 7]

JUL 28 1964 [redacted]

[redacted]

Leon. Spiegel. Whitman

JOHN GREEN, Court Reporter

[fol. 8]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2-B, NEW YORK COUNTY

Docket No. A-4765.

Charge: Vio. §1141 of the Penal Law

THE PEOPLE OF THE STATE OF NEW YORK

On Complaint of:

OFFICER ROBERT GREIFENSTEIN,

—versus—

ROBERT REDRUP, Defendant.

Transcript of Trial—June 4, 1964

Trial held at: 100 Centre Street, New York 13, N. Y.

Before: Hon. Vincent R. Impellitteri, Hon. Michael A. Castaldi, Hon. Thomas E. Rohan, Judges.

Bridgeman: Andrew Orensky.

APPEARANCES:

For the People:

Vincent Cuccia, Esq., Assistant District Attorney, New York County.

[fol. 9] For the Defendant:

Osmond K. Fraenkel, Esq., 120 Broadway, New York 5, N. Y.

Court Officer: Calendar No. 1, Docket A-4765, Robert Redrup. Defendant is charged with violation of §1141 of the Penal Law. Counsel, your name for the record, sir.

Mr. Fraenkel: Osmond K. Fraenkel, 120 Broadway.
Judge Impellitteri: Both sides ready?
Mr. Cuccia: Yes, People are ready.
Judge Impellitteri: Call your first witness.
Mr. Cuccia: Officer Greifenstein . . .

PATROLMAN ROBERT GREIFENSTEIN, Shield No. 3732, assigned to Patrol Borough Manhattan South, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, by the Court, testified as follows:

Court Officer: Give your name, shield number and assignment.
The Witness: Patrolman Robert Greifenstein, Shield [fol. 10] 3732, Patrol Borough Manhattan South.

Direct examination.

By Mr. Cuccia:

Q. Officer, on April 10th, 1964 at about 5:50 P.M. were you in the vicinity of 263 West 42nd Street on the street level of the subway arcade of the City, County, and State of New York?
A. Yes, I was.
Q. And did you visit a newsstand in that location?
A. Yes, sir.
Q. Will you tell us what happened when you arrived at this newsstand?
A. Approximately 5:50 P.M. I approached the newsstand at 263 West 42nd Street, which is on the street level of the subway arcade. I approached the newsstand and saw displayed in a bookrack, two books, "Lust Pool", and "Shame Agent." I asked the clerk, the defendant, Robert Redrup—
Q. This individual sitting in Court today?
A. Yes, sir. I pointed to the bookrack and I said, "Lust Pool and Shame Agent."—

Judge Rohan: What is the name of those books?

The Witness: "Lust Pool" and "Shame Agent." The defendant removed the two books from the bookrack and placed them on the counter. I handed the defendant a [fol. 11] dollar bill. The defendant said, "That will be one dollar and eighty cents." ($1.80). I said, "I am sorry; I thought they were fifty cents each." Then the defendant said to me, "These cost more; they're ninety cents each." I gave the defendant another dollar bill, a second dollar bill, and the defendant gave me—excuse me—the defendant said that "These cost ninety cents each." I said to the defendant, "This one is marked seventy-five cents."—That was the copy of Shame Agent. He said, "Okay, give me a dollar sixty-five." I then handed him the second dollar bill and the defendant handed me thirty-five cents change. Then he placed the two books, "Lust Pool" and "Shame Agent" in a brown paper bag and handed it to me.

Q. Do you have the two books which the defendant handed you?

A. Yes, I do.

Q. Do you have also the paper bag?

A. Yes, sir.

Q. And are the books and paper bag in the same condition now as when you purchased them?

A. Yes, sir.

Mr. Cuccia: I offer all three as People's Exhibit 1, 2, [fol. 12] and 3—the paper bag as 3, "Shame Agent" 1, and "Lust Pool" 2.

Mr. Fraenkel: No objection.

[Paper Bag and 2 Books Received and Marked People's Exhibits Nos. 1, 2, 3, in Evidence, of This Date.]

Judge Impellitteri: You may proceed.

Q. After having made the purchase, Officer, did you identify yourself?

A. I identified myself as a Police Officer and I showed the defendant a search warrant I had for the premises.

Q. Did you have a conversation with him?

A. Yes, I had a conversation with the defendant.

Q. What did you say to him, and what did he say to you?

A. The defendant asked me what was wrong. I told him we had a search warrant for the premises, for certain materials they were selling in the premises. I then searched—

Q. Never mind. Did you have a conversation with him?

A. Yes.

Q. What was the conversation?

A. I asked the defendant who he worked for; he said that he worked for Milton Block. I asked him how long he [fol. 13] worked for Mr. Block; he said for approximately two years; he alternated between the newsstand where the arrest was made and the bookstore which was down the stairs in the subway itself. He stated that he made seventy-five ($75) dollars a week. I asked the defendant while we were in the newsstand, "Why do you sell this garbage?" The defendant stated, "There is worse stuff than that around;" he says, "I think these books here are worse," and he was referring to girlie magazines that were on top of the counter with the nudes and semi-nudes in color and black-and-white.

Mr. Cuccia: All right. I have no further questions.

Cross examination.

By Mr. Fraenkel:

Q. Did you make a note of that conversation after the arrest?

A. I don't believe so.

Q. And you didn't refer to it in your complaint, did you?

A. No, I don't have that in my complaint.

Q. How many arrests do you make— You're assigned [fol. 14] to this field of so-called obscene books, are you not?

A. I am not assigned to it specifically, only when I receive a complaint.

Q. About how many arrests have you made since April in this area?

A. Since April 10th? I haven't made many for 1141 since April 10th.

Q. How many arrests have you made otherwise in that period?

A. For 1141 of the Penal Law?

Q. No—

Mr. Cuccia: Objection.

A. How many arrests have I made since?

Mr. Cuccia: —I withdraw the objection.

A. —Other type arrests?

Q. Yes.

A. Approximately 20.

Q. And you have conversations with everybody when you arrest them?

A. Yes.

Q. And you don't make notes of those conversations, you carry them all in your head?

A. No, I make notes.

Q. But you didn't make notes this time, did you, of this [fol. 15] particular conversation?

A. No.

Mr. Fraenkel: That's all.

Judge Impellitteri: You may step down.

Mr. Cuccia: That is the People's case.

Motion to Dismiss and Ruling Thereon

Mr. Fraenkel: Defendant moves to dismiss separately each count of the information, on the following grounds: First, that the People have failed to prove scienter, any knowledge of the contents of the book, either book, or that defendant had any reason to believe that the books came within the prohibition of the law. Second, on the ground that the People have failed to prove what constitute community standards, that the burden is on the People to offer such proof. Third, on the ground that neither book comes within the prohibition of the law, and, therefore, the People have failed to make out a *prima facie* case, and that to

permit a conviction under this information will constitute a violation of the Constitution of the State of New York, and of the due process clause of the Fourteenth Amendment of the United States Constitution.

[fol. 16] Judge Impellitteri: The Court will reserve decision on your motion.

Mr. Fraenkel: Will you take the stand?—

Robert Redrup, the Defendant, called as a witness in his own behalf, being first duly sworn, by the Court, testified as follows:

Court Officer: What is your name?
The Witness: Robert Redrup.
Court Officer: Where do you live?
The Witness: 11-41 F.D.R. Drive.
Court Officer: What is your business or occupation?
The Witness: Clerk, bookstore.

Direct examination.

By Mr. Fraenkel:

Q. Mr. Redrup, how long have you been employed at this place of business that is involved here?

A. I was working there that night for one hour.

Q. No, no, how long have you been employed by them?

A. Two years.

[fol. 17] Q. And what is your principal duty in connection with that employment?

A. Working downstairs in the bookstore.

Q. Will you describe that bookstore, please?

A. Well, it is down in the arcade of the IND subway, Eighth Avenue.

Q. And how large a store is it?

A. Oh, it is about 20 x 12.

Q. And what kind of books are on sale there?

A. All kinds of paperbacks.

Q. Fiction, poetry?

A. Fiction, nonfiction, historical, philosophical.

Judge Impellitteri: Will you keep up your voice? We have to hear you.

The Witness: Historical, philosophical, mythology, popular novels, mysteries, western.

Q. Now, is there a newsstand connected with that bookstore under the same ownership?

A. Yes.

Q. And where is that located?

A. Up on the street level, at 263 West 42nd Street.

Q. Now, how much of your time is spent at that news-

[fol. 18] stand?

A. None at all now.

Q. But at that period?

A. One hour, 5:30 to 6:30.

Q. Each day, or just certain days a week?

A. No, it was just in that period because a man was sick, I had to go up there from 5:30 to 6:30 when the other man came in, and it was just on Fridays, and it only had been for that week and not the week before, but two weeks before that.

Q. In other words you had been there for about an hour on two earlier occasions besides this one on which you were arrested, is that right?

A. One earlier occasion.

Q. One earlier occasion. When the Police Officer identified himself, what was your conversation with him?

A. I asked him what was wrong.

Q. And what did he say?

A. He said he had a search warrant, showed it to me, wanted to search, and he came in behind the counter and he started to look— Oh, first he asked me for the books, and then I asked the other man if he had them in the place— his name is John.

[fol. 19] Q. There was another clerk there at the same time?

A. Yes, there was, and he said he would look, and he looked. He got them down and he handed them to me. He asked me how much—

Q. Speak up, please.

A. He asked me how much; I told him "One dollar and eighty cents," and then there was a question of a price because one was marked "75" on the binding, and I asked John about it and he said, "Charge what it says." I told him, "All right, a dollar sixty-five." ($1.65). He paid me, and I gave him his change.

Q. Did he ask you anything about how long you have been employed there?

A. After, yes.

Q. Tell us about that conversation.

A. I told him I was only up here for an hour on Friday nights, and it was only for this particular period because a man was sick, that he couldn't be there, so I filled in for that hour.

Q. You heard the Officer testify that you had said there were worse books than these there; was anything like that said?

A. I don't recollect anything like that going between us [fol. 20] in conversation.

Q. Was anything said by you with reference to certain girlie magazines that were on the counter?

A. No.

Q. Are you married?

A. Yes.

Q. Children?

A. One child.

Q. One child. Have you ever been convicted of anything before?

A. No.

Q. Or even arrested before?

A. No.

Q. Have you ever seen these, either of these books before that time?

A. No, I didn't.

Cross examination.

By Mr. Cuccia:

Q. Mr. Redrup, how old are you?

A. Thirty-six.

Q. And you have been working for your present employer [fol. 21] for about two years, is that correct?

A. That is correct.

Q. And you say you were primarily in a bookstore downstairs?

A. I have been in the bookstore for the last eight months since it has been opened.

Q. And on how many occasions have you worked at the newsstand where you were arrested?

A. Previous?

Q. Previously to the time you were arrested?

A. For the remaining period of the two years—sixteen months.

Judge Impellitteri: Will you keep up your voice?

The Witness: Sixteen months; the remaining of the two years I worked upstairs at the newsstand.

Q. That's where you were arrested, is that right?

A. Yes.

Q. Your salary is seventy-five ($75) dollars a week?

A. Yes, it is.

Q. Did you tell the Officer it was seventy-five ($75) dollars a week?

[fol. 22] A. Yes, I did.

Q. You say another man was sick and that's why you were helping out in the newsstand?

A. That is correct.

Q. What is his name?

A. Tom Leonard.

Q. And how long had he been sick?

A. He was working, but he couldn't work at the newsstand; in other words, he had a rupture and he couldn't

work up there in this period because he couldn't lift heavy newspaper bundles.

Q. Between 5:30 and 6:30?

A. No, he was working downstairs.

Q. He couldn't work at the newsstand between 5:30 and 6:30?

A. Right.

Q. So he went down to the bookstore?

A. He couldn't work at the newsstand at all, so because of our schedule the way it was, the man who was going to take his place at the newsstand came in at 6:30, so what he did was he came in 5:30, relieved me at the bookstore that Friday night. I went up from 5:30 to 6:30 until the other man came. And the other man came, incidentally, [fol. 23] while the Police Officers were there.

Q. Is Mr. Leonard here in Court today?

A. No, he isn't.

Q. You say there was another gentleman named John who was in the newsstand with you?

A. Yes, right.

Q. Was he working there also?

A. Yes.

Q. Do two men usually handle that newsstand?

A. At that time, yes.

Q. And was he also selling magazines and newspapers and what-not?

A. He was selling—he was over on the side where magazines were, and I was at the cash box selling whatever people bought, newspapers predominantly.

Q. You say when the Police Officer asked by name for the two books, you in turn questioned John?

A. That's right.

Q. And did he show you where the two books were?

A. He went and got them.

Q. He got them?

A. That's right.

Q. And he handed them to you?

[fol. 24] A. I believe so, yes.

Q. Well, did he hand them to the Police Officer directly, or did he hand them to you?

A. I am not positive on that point whether he handed them to me or the Police Officer.

Q. Is it possible he put them on the stand himself, on the counter?

A. It is possible, yes.

Q. And then he went back to his original post on the other side of the stand?

A. Well, it is one stand, yes, right there.

Q. And you said "One dollar and eighty cents," right?

A. Yes.

Q. How did you arrive at the figure $1.80?

A. Because they charge 90 cents apiece for those books.

Q. Didn't you look at the covers?

A. Not usually, no.

Q. Did you look at the covers in this case?

A. No, not until after there was some question.

Q. You just said "$1.80"—

A. Yes.

[fol. 25] Q. —off the top of your hat?

A. Yes, because there is a sign, ninety cents apiece.

Q. Look at People's Exhibit 2, "Lust Pool," tell me if there is a figure on that?

A. No, no figure.

Q. No figure at all?

A. No, not there.

Q. And look at "Shame Agent" and tell me what figure is on that?

A. "Seventy-five cents."

Q. "Seventy-five cents." And you charged $1.80?

A. No.

Q. You asked $1.80 originally?

A. Originally, yes, I asked $1.80.

Q. Then you turned to John, is that right?

A. Right, and I asked him, "What about this?"—it wasn't crossed off, and he said, "Charge what it says," and I told the Officer then, "$1.65."

Q. Was John present when the arrest was made?
A. Yes, he was.
Q. Did the Police Officer arrest him?
A. No, he did not.
[fol. 26] Q. Did he say anything to John?
A. He said he is going to take one of us in.
Q. John said that?
A. No, no.
Q. The Police Officer said that?
A. Yes.
Q. What type literature is sold in the newsstand where you worked that particular day where you were arrested?
A. Magazines, papers, pocketbooks.
Q. Were any girlie magazines on the counter?
A. Girlie magazines, yes.
Q. There were?
A. Yes.
Q. And tell me, do you sell philosophical works in that newsstand?
A. They don't handle that type pocketbook.
Q. Do you handle historical novels?
A. No.
Q. Primarily detective stories, isn't that right, westerns, and books of this type, isn't that what you sell in that newsstand?
A. They sell Time Magazine, Life, the usual magazines that newsstands sell, Sport magazines, Racing magazines.
[fol. 27] Q. But you also knew that books along the style of "Lust Pool" were sold in that stand, didn't you, when you took over?
A. I knew those books were sold there; I could see them.
Q. Generally, you knew what was sold in that newsstand, the type literature?
A. No.
Q. Well, you knew philosophical works weren't sold in that newsstand?
A. Of course.

Q. Did you sell any books by Rousseau at that newsstand?

A. No.

Q. Do you sell any books by Descartes at that newsstand?

A. Not familiar with the title.

Q. Do you sell any books by Winston Churchill in that newsstand?

A. Not unless they're in magazine articles.

Q. I am talking about pocketbooks?

A. No.

Q. When immediately before the day of the arrest had [fol. 28] you been there in that newsstand selling?

A. When before?

Q. Yes?

A. Two weeks before on a Friday afternoon.

Q. You worked for an hour then?

A. That's right.

Q. And before that when was the last time?

A. About eight months.

Q. Eight months. Prior to that?

A. About last August, I think, or July. I may have filled in one Sunday, I'm not sure, I can't remember.

Q. Tell me, is John here today?

A. No, he isn't.

Q. Have you spoken to your employer Mr. Block about this case?

A. He knows about it, yes.

Q. Have you spoken about it—did you tell him you were arrested?

A. Sure, definitely.

Q. And did you tell him that you had only been working there one hour from 5:30 to 6:30, did you tell him that?

A. He knew that.

Mr. Fraenkel: I object to that. What difference does it [fol. 29] make whether he told his employer about it?

Judge Impellitteri: Objection sustained. Any further questions?

Mr. Cuccia: I have nothing else.

Mr. Fraenkel: Step down. Defendant rests.

Judge Impellitteri: People?

Mr. Cuccia: People rest.

Judge Impellitteri: Motion.

MOTION TO DISMISS, ETC. AND RULING THEREON

Mr. Fraenkel: Defendant renews the motion previously made, and moves for judgment of acquittal on the ground the People have failed to prove the defendant's guilt beyond a reasonable doubt.

Judge Impellitteri: Court will reserve decision, and set this case down for decision for the 10th—

Mr. Fraenkel: Could it be the 11th rather than the 10th?

Judge Impellitteri: Yes, reserve decision, set down for June 11th, 10:00 A.M.— May I have the papers, please?

Patrolman Greifenstein: Your Honor, will it be necessary for me to be here that day?

[fol. 30] Judge Impellitteri: No.

Patrolman Greifenstein: Thank you, sir.— I have additional copies—

Judge Impellitteri: Then let's have two additional sets.

Patrolman Greifenstein: I have one more copy of "Shame Agent," and 7 copies of "Lust Pool," Your Honor.

Judge Impellitteri: Let's have whatever you have got.

Court Officer: Judge Castaldi has the books in evidence.

[fol. 32]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

BOROUGH OF MANHATTAN, PART 2B

Docket No. A 4765

Charge: 1141 Penal Law

[Title omitted]

VERDICT—June 11, 1964

Before: The Honorable, Vincent Impelliteri, Presiding, Thomas E. Rohan and Michael Castaldi, Justices, Criminal Court.

[fol. 33] Bridgeman: Docket No. A 4765, Robert Redup, charged with 1141 of the Penal Law. Defendant is represented by Osmond K. Frankel, 120 Broadway, New York. Case is on for decision.

Presiding Judge: During the time since the conclusion of this case the court has reached a decision in this matter. The court has read the two books involved in this case and the motion to dismiss is denied as to each count of the information and the defendant is found guilty as charged of both counts of the information. The case will be put down for investigation and sentence. June 28. Is the defendant out on bail?

Court Officer: Yes.

Presiding Judge: Bail is continued.

(Whereupon the within matter was adjourned for sentence to June 28, 1964.)

[fol. 35]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK: PART 2B

Docket No. A 4765

[Title omitted]

SENTENCE—July 28, 1964

Before: The Honorable Judges, Reuben Levy, Presiding, Spiegel and Whitman.

[fol. 36] Bridgeman: A 4768, Robert Redrup, charged with Obscent Prints. Defendant is represented by Osmond Fraenkel, 120 Broadway, New York, New York.

Presiding Judge: Is this Robert Redup before us?

Defendant's Counsel: Yes, that is right.

Presiding Judge: Is there any legal cause why sentence should not be pronounced?

Defense Counsel: Nothing. He was convicted of the section dealing with obscene prints—

Presiding Judge: He had no prior record according to the yellow sheet. Is there anything that you want to say before sentence is pronounced?

Defense Counsel: I want to call the court's attention to the fact that not only has he no prior record but he is married for about six years; he lives with his wife and child. He is employed. It is an accident more or less that he happened to be in charge of the place at the time that this [fol. 37] occurred. I therefore ask the court to be as lenient as possible aside from the fact, of course, that we contend that the conviction was not justifiable as a matter of law.

Presiding Judge: We have the probation report before us and it is recommended that he should have a suspended sentence so that is the sentence.

Defense Counsel: Thank you, sir.

(Whereupon the within matter was concluded.)

[fol. 38]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

Docket #A 4765

[Title omitted]

NOTICE OF APPEAL—July 30, 1964

Please Take Notice that defendant hereby appeals to the Appellate Term of the Supreme Court, for the First Judicial Department, from a judgment of conviction for violation of Section 1141 of the Penal Law rendered July 28, 1964, pursuant to which defendant received a suspended sentence.

Dated: July 30, 1964

Osmond K. Fraenkel, Attorney for Defendant, Office & P. O. Address, 120 Broadway, New York 5, N. Y.

To:

Clerk of the Criminal Court, County of New York.

Hon. Frank S. Hogan, District Attorney of New York County, 155 Leonard Street, New York 13, N. Y.

[fol. 39]

AFFIDAVIT OF NO OPINION

State of New York,
County of New York, ss.:

Osmond K. Fraenkel, being duly sworn, deposes and says:

I am the attorney for the above named appellant. No opinion was rendered by the Criminal Court of the City

of New York, County of New York, other than the statement appearing on the minutes of the hearing of July 28, 1964.

Osmond K. Fraenkel

Sworn to before me this 25th day of September, 1964.

Edward J. Walsh, Jr., Notary Public, State of New York, No. 30-9517275, Qual. in Nassau Co., Certificate filed in New York County, Commission Expires March 30, 1966.

[fol. 40] Certification by Attorney (omitted in printing).

[fol. 41]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK

ORDER SETTLING CASE—October 13, 1964

The foregoing case on appeal, containing all the evidence, is hereby settled and ordered on file.

Dated: October 13, 1964.

Larry M. Vetrano, Judge, Criminal Court of the City of New York.

[fol. 42]

IN THE CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

—against—

ROBERT REDRUP, Defendant.

STIPULATION RE EXHIBITS—October 13, 1964

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto that the exhibits

herein, People's Exhibits 1, 2 & 3, need not be part of the record and that the originals thereof may be submitted on the calendar call of this case.

Dated: October 13, 1964.

Frank S. Hogan, District Attorney, New York County, By: Milton M. Stein, Attorney for Plaintiff.

Osmond K. Fraenkel, Attorney for Defendant.

[fol. 43] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 44]

IN THE APPELLATE TERM OF THE SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT

Present: Hon. Samuel M. Gold, J.P., Hon. Louis J. Capozzoli, Hon. Samuel H. Hofstadter, Justices.

No. #585

THE PEOPLE OF THE STATE OF NEW YORK, Respondent.

vs.

ROBERT REDRUP, Defendant-Appellant.

JUDGMENT—December 17, 1964

An appeal having been taken to this Court by Robert Redrup, the defendant-appellant, from a judgment of conviction by Hons. Impellitteri, Castaldi, Rohan, Judges of the New York City Criminal Court, upon the charge of Violation of §1141 of the Penal Law, entered on the 11th day of June, 1964, and said defendant-appellant having been sentenced by Hons. Levy, Spiegel, Whitman, Judges of said Court on the 28th day of July, 1964, as follows:

Suspended sentence

and the said appeal having been heard and due deliberation having been had thereon,

It Is Ordered and Adjudged that the said judgment so appealed from be and the same is hereby affirmed.

Enter

Samuel M. Gold, Justice, Appellate Term, Supreme Court, First Department.

[fol. 45]

In the Court of Appeals of New York

Before: Hon. Stanley H. Fuld, Associate Judge.

The People of the State of New York, Respondent,

against

Robert Redrup, Defendant-Appellant.

Certificate Denying Leave to Appeal—January 4, 1965

I, Stanley H. Fuld, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above named appellant for a certificate pursuant to §520 of the Code of Criminal Procedure, and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Albany, New York
January 4, 1965.

Stanley H. Fuld
Associate Judge

[fol. 46]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1964

ROBERT REDKUP, Petitioner,

vs.

NEW YORK.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 25, 1965

Upon Consideration of the application of counsel for petitioner(/s/),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including April 19th, 1965.

J. M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 25th day of March, 1965.

(Handwritten notation)

I have shortened the extension requested by one week in order to ensure that action on the petition for certiorari may be had at this Term.

J. M. H.

[fol. 47]

SUPREME COURT OF THE UNITED STATES

No. 72—October Term, 1965

ROBERT REDRUP, Petitioner,

v.

NEW YORK.

ORDER ALLOWING CERTIORARI—April 25, 1966

The petition herein for a writ of certiorari to the Appellate Term of the Supreme Court of the State of New York, First Judicial Department is granted, limited to Question 4 presented by the petition which reads as follows:

"4. Whether, consistent with the due process requirements of the Fourteenth Amendment and the constitutional standards for judging obscenity enunciated by the Supreme Court, a judgment of conviction can be rendered against an accused without proof in the record that the accused knew the contents of the material or believed that the material involved violated the law, and where books of a similar character have been held to be constitutionally protected by the courts of the State."

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Stewart are of the opinion that certiorari should be granted on all the questions presented by the petition.